

OGC Has Reviewed

Deputy Chief, Procurement Division

14 October 1954

Assistant General Counsel


"Buy American Act"

1. You have requested our opinion as to the application to this Agency of the provisions of the so-called "Buy American Act".
2. The Act of March 3, 1933, (41 U.S. Code 10a-c), usually called the "Buy American Act" requires that all articles, materials and supplies acquired for public use within the United States, its territories or possessions, must be of domestic origin (i.e., mined or produced in the United States, or manufactured in the United States substantially all from supplies mined, produced or manufactured in the United States). Three exceptions to this general rule can be taken from the wording of the Act: (1) when the articles, materials or supplies are for use abroad, (2) when they, or the supplies from which they are manufactured, are not obtainable domestically in sufficient and reasonably available commercial quantities or of a satisfactory quality, and (3) when the head of the Agency concerned determines that domestic purchase would be inconsistent with the public interest or would result in an unreasonable cost.
3. The first exception is of great importance to this Agency since so many of its supplies are destined for overseas use, or are purchased overseas, and may be used in connection with ordinary house-keeping items as well as supplies for operational purposes.
4. The second exception is dependent upon matters of fact, evidence of which must be submitted in connection with vouchered contracts to representatives of the General Accounting Office in the same manner as other facts necessary to support a claim for payment or for credit. Unlike the third exception, showing of the factual basis for the exception may be made by persons other than the head of the Agency. The Comptroller General has determined, however, (see 14 Comp. Gen. 601) that the finding called for by the third exception requires the personal judgment of the head of the Agency and cannot be delegated.
5. In addition to the exceptions granted by the express wording of the Act, this Agency also possesses the authority under Section 11 of the Central Intelligence Agency Act of 1949 to expend its funds without regard to other provisions of law whenever required by clandestine intelligence operations. As interpreted by the Comptroller General

this authority does not extend, however, to expenditures relating to normal housekeeping common to all government agencies.

6. In summary, it is our opinion that the Buy American Act has no application to CIA for procurement of any type of material for use outside the United States, its territories and possessions, nor to clandestine procurement for operational use in any country. Exceptions from the Act may also be granted in cases where the supplies cannot be obtained domestically in sufficient quantity or quality and when the Director of Central Intelligence determines that domestic purchase would be inconsistent with the public interest or would result in an unreasonable cost.

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